

FILED

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

NOV 10 2015

CLERK, U.S. DISTRICT COURT

By _____
Deputy _____

CYNTHIA TOODLE,

§

Plaintiff,

§

VS.

§

NO. 4:15-CV-742-A

TARGET CORPORATION,

§

Defendant.

§

MEMORANDUM OPINION

and

ORDER

Before the court for consideration and decision is the motion of defendant, Target Corporation, to dismiss the claims of plaintiff, Cynthia Toodle, against it for failure to state a claim upon which relief may be granted. The court has concluded that such motion should be granted.

I.

Nature of Plaintiff's Claims

This action was initiated by plaintiff by the filing of her complaint (referred to in state court as a "petition") in the District Court of Tarrant County, Texas, 342nd Judicial District, on September 8, 2015. The action was removed to this court by notice of removal filed October 5, 2015.

By her complaint, plaintiff seeks to recover damages she alleges that she suffered when she fell at one of defendant's retail outlets located in Tarrant County, Texas, as she was

shopping. According to the allegations of the complaint, plaintiff saw one of defendant's employees stocking off of a pallet, and she asked him if he would remove the pallet so she could pass. She alleged that as she attempted to squeeze between the pallet and freezer doors in the frozen food aisle, her left foot got stuck in the pallet, which the employee did not remove, causing injuries to her foot and leg. According to the allegations in the complaint, defendant's careless and negligent conduct in not removing the pallet was a proximate cause of her injuries. The nature of the allegations in plaintiff's complaint indicate that she is asserting a premises-liability claim against defendant.

II.

Ground of Defendant's Motion to Dismiss

Defendant maintains that plaintiff has failed to state a claim against it because she has failed to allege any facts from which the court could reach a conclusion that defendant failed to exercise reasonable care to protect her from a dangerous condition in the store that was not readily apparent to plaintiff. Put another way, defendant asserts that plaintiff does not allege any facts that would support the conclusion that the existence of the pallet on the floor caused an unreasonable risk of harm to her, with the result that she has failed to

allege facts that would support a necessary element of a premises-liability cause of action.

III.

Analysis

Plaintiff has failed to respond to the motion to dismiss. The court's study of the allegations of plaintiff's pleading and the arguments and authorities upon which defendant relies in support of its motion cause the court to conclude that the ground of the motion has merit.

IV.

Order

Therefore,

The court ORDERS that defendant's motion to dismiss be, and is hereby, granted and that all claims and causes of action asserted by plaintiff against defendant be, and are hereby, dismissed.

SIGNED November 10, 2015.

JOHN McBRYDE
United States District Judge